

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JOSE R. VILCHIS,

Plaintiff,

v.

WALMART INC. and WAL-MART
STORES TEXAS, LLC,

Defendants.

Cause No.: 3: 21-CV-00030

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, WALMART INC. and WAL-MART STORES TEXAS, LLC (hereinafter collectively “Walmart”) and file their Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

I.
FACTUAL BACKGROUND

1. This lawsuit was originally filed on December 14, 2020 under Cause No. 2020DCV3986, and styled *Jose R. Vilchis v. Walmart Inc. and Wal-Mart Stores Texas, LLC*, in the 120th District Court of El Paso County, Texas (hereinafter the “State Court Action”).

2. A true and correct copy of the docket sheet from the State Court Action is attached to this Notice as “Exhibit A.” Pursuant to 28 U.S.C § 1446(a) a true and correct copy of all process, pleadings and orders in the State Court Action are being attached to this Notice as “Exhibit B.”

3. Plaintiff asserts Texas state law claims for negligence, gross negligence, and premises liability, alleging that while on Walmart’s premises, he “tripped on clutter and/or small screwlike objects that were in an aisle at the Store.” See Ex. B, Pl.’s Orig. Pet. at ¶ 11.

4. Plaintiff seeks damages for past and future: medical expenses, pain and suffering, and mental anguish, in amount "over \$250,000." *Id.* at ¶ 10, 20.

**II.
BASIS FOR REMOVAL**

5. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1332 and pursuant to 28 U.S.C. § 1441(a). Any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendants to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a). The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of a State and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2).

6. Diversity of citizenship is determined at the time that the plaintiff filed the lawsuit. *Freeport-McMoran, Inc. v. K N Energy, Inc.*, 498 U.S. 426 (1991). Plaintiff was a Texas citizen at the time that he filed this lawsuit and is currently a Texas Citizen. *See Ex. G-H*. Plaintiff has lived at 1904 Pueblo Corona, El Paso, Texas 79936 since approximately 1996. *See Ex. G*. In addition, at the time that this lawsuit was filed, Plaintiff held a Texas driver's license and was employed in Texas. *See Ex. H*. Accordingly, Plaintiff's discovery responses affirmatively show that Plaintiff was a Texas citizen on the date that this lawsuit was filed.

7. On the contrary, Defendant Walmart Stores Texas, LLC is not a Texas citizen. That is, Walmart Stores Texas, LLC is a limited liability company which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. Wal-Mart Real Estate Business Trust is the sole member of Walmart Stores Texas, LLC. Wal-Mart Property Co. is the sole unit holder of Wal-Mart Real Estate Business Trust. Wal-Mart Stores East, LP is

the sole owner of Wal-Mart Property Co. Wal-Mart Stores East, LP is a limited partnership which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. WSE Management, LLC is the sole general partner, and WSE Investment, LLC is the sole limited partner, of Wal-Mart Stores East, LP. WSE Management, LLC and WSE Investment, LLC are both limited liability companies which were formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. Wal-Mart Stores East, LLC is a limited liability company whose principal place of business is in Bentonville, Arkansas. Wal-Mart Stores, Inc. (i.e., Walmart Inc.) is the sole member of Wal-Mart Stores East, LLC. Wal-Mart Stores, Inc. (i.e., Walmart Inc.) is a corporation which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. *See Ex. C, Affidavit of Edwards; see also Marquez v. Walmart, No. 3:18-CV-00302, n. 1 and accompanying main text (W.D. Tex. Jan. 8, 2019) (finding that Walmart Stores Texas, LLC is a citizen of states other than Texas).*

8. Furthermore, Defendant Walmart, Inc. is not a Texas citizen. That is, Walmart, Inc. is the new name of Wal-Mart Stores, Inc., a corporation formed under the laws of the State of Delaware with its principal place of business in Arkansas. *See Ex. C; see also Ex. D, Texas Secretary of State Form 406 filed on December 15, 2017 (indicating that Walmart Inc. is Wal-Mart Stores, Inc.'s new name).*

9. Thus, Plaintiff and Walmart are completely diverse.

10. Further, Plaintiff seeks “over \$250,000” in damages, an amount over the \$75,000.00 threshold under 28 U.S.C. 1332(a). *See Ex. B, Pl.’s Orig. Pet. at ¶ 5.* Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is also satisfied.

11. Therefore, because Plaintiff and Walmart are completely diverse, and because Plaintiff seeks damages in an amount over \$75,000.00, this Honorable Court has jurisdiction over Plaintiff's claim.

III. PROCEDURE

12. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than one year after the commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. *Id.*

13. Plaintiff filed the State Court Action on December 14, 2020. Ex. B, Pl.'s Orig. Pet. Plaintiff's Original Petition merely alleged that Plaintiff was a "Texas resident," rather than a Texas citizen. *Id.* at ¶ 2. Accordingly, the case was not removable until additional discovery with regard to Plaintiff's citizenship was conducted. *See Midcap Media Finance, L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310 (5th Cir. 2019) ("[c]itizenship and residence, as often declared by this court, are not synonymous terms.").

14. Walmart served Plaintiff with Requests for Admission and Interrogatories for the sole purpose of ascertaining Plaintiff's citizenship on December 30, 2020. *See* Ex. E-F. Plaintiff served his answers/responses to Walmart's discovery requests on January 29, 2021. *See* Ex. G-H. It was on this date that for, the first time, it was ascertainable that Plaintiff was a citizen of Texas. *Id.* Accordingly, because less than thirty (30) days have elapsed since this date, Walmart's Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

15. Venue of this removed action is proper in this Honorable Court pursuant to 28 U.S.C. § 1441(a) as El Paso is the District and Division where the State Court Action is pending.

16. Pursuant to 28. U.S.C. § 1446(d), Defendants will promptly give all parties written notification of the filing of this Notice, and will also promptly file a copy with the District Clerk of El Paso County, Texas where the State Court Action is currently pending.

**IV.
JURY DEMAND**

17. Walmart asked for a state court jury trial and asks for a jury trial in this Court.

WHEREFORE, PREMISES CONSIDERED, Walmart prays that this matter be placed on the Court's docket and for any other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

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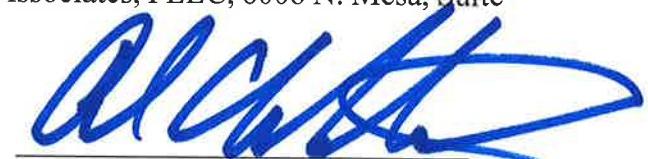

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State Bar No. 24109059

Attorneys for Walmart Inc. and Walmart Stores Texas, LLC

CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I certify that on the 9 day of February, 2021, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: Ricardo E. Vielledent, Esq., vielledentlaw@gmail.com, Vielledent & Associates, PLLC, 6006 N. Mesa, Suite 700, El Paso, Texas 79912.



Cal Mundell